



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of June 24, 2008
Approved July 22, 2008

Members present: Chairman Doug Andrew, Co-Chairman Scott Boisvert, Members Jack Baker, John (Jack) Downing, and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew called the meeting to order at 7:40 p.m. then called the roll and Mr. Downing was introduced as a new ZBA member.

MINUTES

Mr. Boisvert made the motion to accept the minutes of the May 27, 2008 meeting as written. Motion seconded by Mr. Baker with unanimous favorable vote except for Mr. Downing who abstained as he was not a voting member for that meeting.

Case # 07-003
FREMONT CHILDRENS, LLC
MAP 2 LOT 181
COPP DRIVE

Present: Representing Attorney David Rayment of Cleveland, Waters and Bass Attorneys at Law and Kimberly Andrew.

Mr. Andrew opened this Public Hearing at 8:42 pm and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8:00 pm on May 27, 2008 in the downstairs Land Use Meeting Room of the Fremont Town Hall to reconsider the Boards' action relative to the Superior Court ordered remand for further reconsideration in case #07-003, Fremont Children's, LLC Map 2 Lot 181, Copp Drive, Fremont, New Hampshire.

You are invited to appear in person or by counsel. Written comments will be accepted up until the date of the hearing.

It was noted that this hearing was noticed on May 12, 2008 at the Fremont Post Office and Fremont Town Hall and in the May 16, 2008 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on May 16, 2008 and all returns have now been received.

Mr. Andrew related that at this time the ZBA consists of four full Board Members and one Alternate. He explained that an Alternate cannot fill the Board, but can only take the place of an absent Member, so because there is not an absent Member the Alternate cannot be appointed. Mr. Andrew said that another person is expected to be appointed to the Board soon. Therefore, Mr. Andrew stated that there is not a full five Member Board present and related to Atty. Rayment that he has the option of waiting for the presence of a full Board for a decision. Atty. Rayment opted to proceed with the four members present and he asked that the Board consider the hardship as remanded by the Court and vote in favor of the condition.

Mr. Andrew asked new Member Mr. Downing if he has reviewed the minutes and decisions as well as the Court history of this case. Mr. Downing answered that he had and is confident that he can make an informed decision for the remanded re-vote.

It was noted that in the Superior Courts decision Judge Lewis determined that the Board applied the wrong legal standard to determine if special conditions of the property make an area variance necessary to enable the development as proposed, he vacated the Board's variance denial and remanded the matter for further consideration consistent with his order. There was some discussion by the Members relative to the fact that the Zoning Ordinance states that a 4-plex would require 200' frontage plus 20' per living unit, or 280' frontage, and the property only has 89.52'. The Members also discussed the Boccia criteria for the first prong of the hardship test – special conditions of the property that makes the variance necessary – and it was agreed by the Members to move forward with a re-vote on the first prong of the hardship test as remanded.

The condition and results of the re-vote were as follows:

3. Denial of the variance would result in unnecessary hardship to the owner because: Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship as:
 - a. the following special conditions of the property make an area variance necessary in order to allow the development as designed: *The parcel exists with approximately 1/3 of the road frontage required for a 4 plex building.*

Board vote:

Mr. Boisvert yes – based on the information brought by the Attorney relative to the Boccia criteria.

Mr. Andrew yes

Mr. Baker yes

Mr. Downing yes

Mr. Boisvert made the motion that, based on the result of the Boards previous vote on the five conditions of an Area Variance and the re-vote on the first prong of the hardship test, as remanded by the Superior Court, the Fremont Zoning Board of Adjustment grant the Area Variance to the terms of Article IV Section 2 of the Fremont Zoning Ordinance, as requested by Fremont Children's, LLC for Map 2 Lot 181, Copp Drive, Fremont, New Hampshire to allow the construction of a 4-plex building

with less than two hundred and eighty (280) feet, but not less than eighty nine (89.52') feet frontage on a Federal, State or Town Highway.

Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Andrew explained to Attorney Rayment that there is a thirty (30) day appeal period and that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will reference to the property deed.

Attorney Rayment thanked the Board Members for their time and efforts during this case and stated that he would send a check to cover the recording of the decision.

Mr. Boisvert made the motion to close this Public Hearing at 7:58 p.m.

Motion seconded by Mr. Downing with unanimous favorable vote.

Case # 08-002

Ioannis Kakouris / Robert Premont

MAP 3 LOT 119

431 Main Street

Present: Kimberly Andrew

There was no applicant or representative present.

Mr. Andrew opened this Public Hearing at 8:02 pm and stated that this is a continuation of the May 27, 2008 portion of this Public Hearing which was continued at the applicants representing surveyor Timothy Lavelle's request to allow time for more time to resolve the properties conservation easement issue.

Mr. Andrew stated that at the May 27, 2008 portion of this Public Hearing there were conflicting request messages from Mr. Lavelle in that he sent the Board a May 27, 2008 e-mail request for withdrawal of the application, but in a subsequent phone conversation Mrs. Bolduc understood him to say that due to information he received about the Conservation Easement he did want to continue with the Public Hearing and did not want to withdraw the application. At that time the Board felt that it would be better to continue the Public Hearing to the next meeting to give the applicant the opportunity to clarify whether he intends to withdraw the application. This was so voted.

Mr. Andrew stated that on this date the Board has received a June 24, 2008 request for withdrawal, without prejudice, of the Kakouris/Premont application for a variance and special exception for Map 3 Lot 119 as submitted by Mr. Lavelle.

At 8:10 pm Mr. Boisvert made the motion to accept Timothy Lavelle's request, as representing Surveyor, for the withdrawal of the application of Case #08-002, Ioannis Kakouris / Robert Premont Map 3 Lot 119, without prejudice and to close this Public Hearing.

Motion seconded by Mr. Baker with unanimous favorable vote.

Point of Order

At 8:10 Mr. Andrew stepped down as a Zoning Board of Adjustment member as he is an applicant for the next case. Mr. Boisvert stepped in as Co-Chairman.

Case # 08-003
ANDREW, Robert
Douglas & Kimberly
MAP 6 LOT 003-004

Present: Douglas and Kimberly Andrew

Mr. Boisvert opened this Public Hearing at 8:12 p.m. and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8:00 pm on June 24, 2008 in the downstairs Land Use Meeting room of the Fremont Town Hall, for Robert, Douglas and Kimberly Andrew, Map 6 Lot 003-004, 11 Rogers Road Fremont, New Hampshire.

The applicants are seeking a Special Exception from Article IX Section H of the Fremont Zoning Ordinance to allow the construction of a driveway and parking area closer than one hundred (100) feet to a wetland.

You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.

Mr. Boisvert noted that this hearing was noticed on June 11, 2008 at the Fremont Post Office and Fremont Town Hall and in the June 13, 2008 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on June 13, 2008 and all returns have been received. The application package included: a cover letter of intent, 6 copies of the drawn plan, proper check amount, a current list of abutters, letter of intent, letter from owner Robert Andrew authorizing Douglas and Kimberly Andrew to represent him, and a June 11, 2008 Code Enforcement letter of denial. It was agreed that the application was complete.

Mr. Boisvert explained the purpose of the Board and the procedure for a Special Exception and referred to and read Article IX Section H of the Fremont Zoning Ordinance. He stated that the three questions which must be answered to decide whether or not a Special Exception can be legally granted are:

1. Is the use one that is ordinarily prohibited in the district?
2. Is the use specifically allowed as a Special Exception under the terms of the ordinance?
3. Are the conditions specified in the ordinance for granting the exception met in the particular case?

The Board received and reviewed letters of referral from the Building Inspector, Health Officer, Conservation Commission and Planning Board. The Board had not received a report from Richard Bond, CSS, CWS, Rockingham County Conservation District.

(see all correspondences in file)

Comment sheets were received from the following with comments in italics:

Conservation Commission: *The Conservation Commission requests that the plan proposed be changed to maximize the distance from the driveway and parking lot to the wetland by shifting the parking area back and moving it over to the northeast. It appears that it could be designed in such a way as to meet compliance. We would like to meet with the owner to discuss why a special exception is needed.*

Planning Board: *Please consider: it appears that there is room on the property for the driveway and parking area to be setback to minimize the impact to wetlands.*

Health Officer: *no problem*

The Board reviewed plan #1692 drawn by Blaisdell Survey, LLS and dated May 6, 2008. This plan showed entire 3.25 acre parcel, existing well and well radius location, house, septic and shed. It also showed the locations of the proposed second septic area, a proposed building and associated driveway with parking, the locations of the wetland on the subject property and on the other side of Rogers Road. It showed the proposed driveway construction to be 77' feet from a wetland across the street (Rogers Road), a proposed parking area 90.51' from the same wetland and 80.34' from a wetland on the subject property.

There was some discussion relative to whether the parking area could be moved, as suggested by the Conservation Commission and Planning Board and the question of paving closer that 100' to a wetland.

A site visit was discussed and it was agreed that a site visit was in order.

At 8:45 pm Mr. Downing made the motion to continue this Public Hearing to 6:30 pm. on July 1, 2008 at the property at 11 Rogers Road for the purpose of a site visit, and to 7:30 p.m. on July 22, 2008 at the Fremont Town Hall.

Motion seconded by Mr. Baker with unanimous favorable vote.

RULES OF PROCEDURE

The Board reviewed the rules of procedure as taken mostly from the Office of State Planning Handbook. Mr. Baker made the motion to accept the rules of procedure as drafted, but with the annual election of the Chairman and Co-Chairman in the month of January.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence.

At 9:15 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary